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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

MICHELLE HESS, Petitioner, v. WORKERS' COMPENSATION APPEALS BOARD, DEPARTMENT OF SOCIAL SERVICES, IHSS et al., Respondents.	F049641 (WCAB No. STK 0171019) **OPINION**

THE COURT[*]

ORIGINAL PROCEEDINGS; petition for writ of review from a decision of the Workers' Compensation Appeals Board. Frank M. Brass, William K. O'Brien, and James C. Cuneo, Commissioners. Alvin R. Webber, Workers' Compensation Administrative Law Judge.

Law Office of Raymond M. Wyatt, and Raymond M. Wyatt, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

Alan R. Canfield and Cynthia Chin-Perez, for Respondents Department of Social Services, IHSS and State Compensation Insurance Fund.

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[*]Before Vartabedian, Acting P.J., Gomes, J., and Hill, J.

Michelle Hess (Hess) petitions this court for a writ of review to determine the lawfulness of a decision of the Workers' Compensation Appeals Board (WCAB) denying her claim for benefits based on insufficient evidence of an industrial injury. (Lab. Code,[1] § 5950; Cal. Rules of Court, rule 57.) We will deny the petition.

BACKGROUND

On February 25, 1999, Hess injured her neck while employed as a home support worker in Sonora for the California Department of Social Services, In-Home Supportive Services (IHSS). Hess's primary treating physician, Barbara Bammann, M.D., diagnosed her condition as incomplete quadriparesis--a partial paralysis in her left leg caused by a damaged lesion in the spinal column. Hess underwent two surgeries in 1999 with limited success.

Orthopedic and hand surgeon George G. Glancz, M.D., conducted a qualified medical evaluation (QME) of Hess for IHSS in July 2003, while neurological surgeon Robert Lieberson, M.D., conducted a QME on her behalf in June 2004. Both evaluators reviewed Hess various medical records as well as sub rosa video taken of her physical activities in February and May 2003.

After reviewing the video surveillance, Dr. Glancz reported his "opinion that Ms. Hess is slightly exaggerating her condition and that she is able to do more than she is claiming to be able to do." Dr. Glancz recommended Hess avoid very heavy work, heavy lifting, neck and shoulder twisting, and repeated bending, squatting, or kneeling.

Both before and after viewing Hess's sub rosa video footage, Dr. Lieberson recommended Hess could only perform sedentary work part time and with frequent breaks. He questioned whether Hess "would be able to compete in the open labor market with these restrictions." Dr. Lieberson expressly disagreed with Dr. Glancz's description that the video depicted Hess walking quickly with only a slight limp.

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[1] Further statutory references are to the Labor Code.

In November 2005, after a July 2005 hearing, a workers' compensation administrative law judge (WCJ) concluded Dr. Glancz's medical reporting presented the "most credible, persuasive and compelling evidence …." Adopting Dr. Glancz's description of Hess's disability, the WCJ found Hess 31 percent disabled entitling her to $13,802.74 in compensation over 133 weeks and future medical care.

Hess petitioned the WCAB for reconsideration, contending the WCJ's award was not supported by the evidence. The WCJ issued a report and recommendation to the WCAB reaffirming that Dr. Glancz's medical opinion was the most credible. On December 12, 2005, the WCAB denied reconsideration by adopting and incorporating the WCJ's reasoning.

DISCUSSION

In reviewing an order, decision, or award of the WCAB, an appellate court must determine whether, in view of the entire record, substantial evidence supports the WCAB's findings. (§ 5952; *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317.) We may not reweigh the evidence or decide disputed questions of fact by substituting our choice of the most convincing evidence for that of the WCAB. (§ 5953; *Western Growers Ins. Co. v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233.) "The credibility of witnesses, the persuasiveness or weight of the evidence, and the resolving of conflicting inferences, are questions of fact." (*Western Electric Co. v. Workers' Comp. Appeals Bd.* (1979) 99 Cal.App.3d 629, 644.) Although we may not disturb an award merely because it is susceptible of opposing inferences, we will not accept factual findings if they are illogical, unreasonable, improbable, or inequitable considering the entire record and overall statutory scheme. (*Judson Steel Corp. v. Worker's Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 664; *Western Growers Ins. Co., supra,* at p. 233.) Notwithstanding the statutory requirement to construe workers' compensation laws liberally in favor of extending disability benefits (§ 3202), the parties

"are considered equal before the law" in proving all issues by a preponderance of evidence (§ 3202.5).

Hess argues the WCAB's findings are not supported by the evidence because the WCJ misquoted statements made by Dr. Lieberson's QME report and drew unreasonable inferences from those misstatements. Hess contends Dr. Lieberson's report, "when read correctly and in context," supports a significantly higher level of permanent disability.

As the WCJ noted in the report and recommendation to the WCAB, Hess's "arguments distill to the contentions that because Drs. Lieberson and Bammann essentially agree on their description of disability they must be seen as correct and the argument that because Dr. Glancz described the video evidence in a different manner than did this WCJ, his opinion is 'biased.'" Both the WCJ and Dr. Lieberson described Hess as walking slowly on the video, while Dr. Glancz described her as walking relatively fast. The WCJ and WCAB found the discrepancy insufficient to discount Dr. Glancz's opinion. We too find this argument unpersuasive, as the opinion of Hess's sub rosa activities was within the evaluating physicians' purview. It is well-settled that "'the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence.'" (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378.) Drs. Glancz and Lieberson reviewed the same sub rosa video surveillance, but viewed the evidence differently. Dr. Glancz opined Hess was exaggerating her symptoms. Adopting the WCJ's reasoning, the WCAB was unconvinced by Dr. Lieberson's medical reporting suggesting Hess was somehow forced to perform certain activities. We will not second-guess the WCAB's conclusion based on Dr. Glancz's medical opinion, even if that opinion is contrary to Hess's QME and her treating physician. A difference of medical opinion does not make the WCAB's award illogical, unreasonable, improbable or inequitable.

DISPOSITION

The Petition for writ of review filed January 26, 2006, is denied. This opinion is final forthwith as to this court.